IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 3 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF GIFT TAX

Versus

KANAIYALAL M. SONI

Appearance:

1. GIFT TAX REFERENCE No. 3 of 1991

MRS MONA BHATT for Petitioner No. 1

NOTICE NOT RECD BACK for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 11/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1971-72:_

"Whether, the Appellate Tribunal is right in law and on facts in deleting the addition of deemed gift under section 4(1)(c) of the G.T. Act?"

2. We have heard Mrs. Mona Bhatt, learned counsel for the applicant- revenue. Though served, none appears for the respondent - assessee.

3. In the order giving rise to this reference, the Income-tax Appellate Tribunal has noted that it was following its decision dated 16-12-1988 in Gift-tax Appeal No.24 of 1987. The view taken by the Tribunal in the said case in favour of the assessee came to be accepted by this Court in GTR No.3 of 1989 decided on 27-6-2002.

4. In that case, the assessee was a co-partner with the present assessee and the question there also was whether the assessee could be said to have gifted his interest in the firm on the reduction of his share therein on account of introduction of new partners. The Tribunal noted that the new partners had introduced capital, were working partners and they were liable to share losses also and that , therefore, there was consideration. Following its finding in the said appeal that there was no gift and consistent with the said finding, the Tribunal held in the instant case of the other co-partner that there was no gift on account of reduction in share of the continuing partners on account of introduction of the new partners.

There is no dispute about the fact that the facts in the instant case are the same as the facts in the aforesaid case and the principles laid down therein are also applicable to the instant case.

5. Hence, following our decision dated 27-6-2002 in GTR No.3 of 1989, we answer the question here also in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)
zgs/-